



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Western Roofing Service--Reconsideration

**File:** B-232666.5

**Date:** June 13, 1991

Claire E. Duffy for the protester.  
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Request for reconsideration of decision that found a proposal, which did not specify the time within which it may be accepted, had expired after 13 months and could not be accepted for award is denied, where the requester presents no evidence of errors of fact or law.

### DECISION

Western Roofing Service requests reconsideration of our decision in Western Roofing Serv., B-232666.4, Mar. 5, 1991, 70 Comp. Gen. \_\_\_, 91-1 CPD ¶ 242, which denied its protest against the award of a contract to Bryant Organization, Inc., under request for proposals (RFP) No. GS-09P-88-KTC-0225, issued by the General Services Administration (GSA), for roofing repairs. Western primarily argues that our decision erroneously concluded that its 13-month offer had expired and could not be accepted for award.

We deny the request for reconsideration.

GSA had received best and final offers (BAFO) on August 23, 1989, from Bryant, Western, and a third company. Bryant had submitted the lowest priced BAFO at \$1,816,000, and Western had proposed \$1,855,485. Before award, the San Francisco area earthquake occurred, which delayed the procurement until August 21, 1990, when GSA issued an amendment, which made certain changes to the RFP and requested new BAFOs. Western did not receive this amendment<sup>1/</sup> and only Bryant submitted a revised BAFO at \$1,981,008. Award was made to Bryant on

<sup>1/</sup> Western concedes that it bears the risk of not receiving the amendment.

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October 5 and Western protested on October 25, after learning of the award.

Western's primary contention was that it should receive the award because it never revoked its offer, which offered a lower price than the award price. We found that Western's BAFO could no longer have been accepted by the agency, even though there was no expiration date specified in Western's August 23, 1989, BAFO<sup>2/</sup> because over 13 months had passed after Western's submission of its BAFO and Western had not indicated any interest in renewing its BAFO until after award. We found that Western's offer expired because the reasonable time within which it might have been accepted had passed.<sup>3/</sup> We also rejected Western's contention that its BAFO could be revived because Bryant would be prejudiced in that it submitted the lowest BAFO price both in August 1989 and in August 1990.

Western does not dispute the proposition that offers without an express expiration date expire after a reasonable time has passed. Instead, Western argues that our determination, that the reasonable amount of time within which Western's offer could be accepted had passed, is incorrect. Western contends that considering all the circumstances (for example, the earthquake, seismic and structural studies, numerous amendments, project funding, and the fact that it did not withdraw its offer) the 13-month delay was not unreasonable. However, we considered these factors in determining that Western's offer would expire in that time and not be susceptible of acceptance. For example, it is unclear that Western could be required to accept the contract if it had elected not to do so.

Western has presented no new evidence to support this contention; it only argues that delays in procurements, such as here, are not subject to legal objection. In this regard, Western references several decisions of our Office, e.g., Saco Def., Inc., B-240603; B-240891, Dec. 6, 1990, 90-2 CPD ¶ 462, and American Identification Prods., Inc., B-227599, July 13, 1987, 87-2 CPD ¶ 42, where we did not object to lengthy delays in the award of various contracts after receipt of proposals.

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<sup>2/</sup> The RFP omitted the required Standard Form 1442, which would have contained a stated offer acceptance period. Contrary to the protester's argument, proposals generally always have expiration dates.


<sup>3/</sup> We also noted that there was general inflation during this period and economic conditions of the construction industry in San Francisco could have significantly changed since the 1989 earthquake.

However, those cases are not relevant to this situation since the offerors in those cases had either extended their offers or were invited to submit revised proposals.

Also, while Western asserts that our decision does not identify the prejudice that would result in accepting its offer, it would clearly prejudice the awardee if Western were permitted to elect whether or not to accept the contract at its earlier price after learning of the awardee's revised price.

Western has made various other comments about our decision, but has not identified any errors of fact or law that would cause us to reconsider our decision. 4 C.F.R. § 21.12(a) (1991).

The request for reconsideration is denied.

  
for James F. Hinchman  
General Counsel